IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.438 OF 2004

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

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Mr. Vijay Tulpule, Senior Advocate with Mr. H.V. Bhadbhade, for the Petitioner.
Mr. R.M. Patne, A.G.P. for Respondent No.1
Mr. C.J. Sawant, Senior Advocate with Mr. Vijay Patil for Respondent No.2.

CORAM : F.I. REBELLO & S.P. KUKDAY,JJ.
DATED : 16TH FEBRUARY, 2005

P.C.

. Rule. Heard forthwith.

2. The petitioner was in the employment of the respondent No.2. Pursuant to an enquiry the services of the petitioner came to be terminated. The Disciplinary Authority to impose punishment was Respondent No.3.

3. An Appeal was available to the Petitioner. The Appeal lay to the Board of Directors. While hearing the Appeal the Respondent No.3 participated in the proceedings, though he was the Disciplinary Authority who had imposed punishment of the Petitioner. The Appeal came to be dismissed.

4 The petitioner in this petition has raised various grounds which for the view to be taken we do not propose to enter into at this juncture. One of the contentions urged on behalf of the petitioner is that the Respondent No.3 being the Disciplinary Authority could not have participated as a member of the Board in the Appeal preferred as it would be an Appeal from caesar to caesar.

. On behalf of the respondent No.3 learned Counsel contends that the Respondent No.3 had to hear the Appeal out of necessity as he was a member of the Board of Directors.

5. In the instant case there is no requirement that for hearing the Appeal that all the members of the Board of Directors had to be remained present. The Appeal had to be heard by the Board which would mean that the normal quoram when the Board meets to transact the business. As such the respondent No.3 as he was Disciplinary Authority could have reclused himself. Just like in any other matter, when the Directors have interest, they do not participate in respect of the subject

matter wherein they have interest. In our opinion the law is no longer res integra considering the judgment of the Apex Court in the case of Amar Nath Chowdhury vs. Braithwaite and Company Ltd. & Ors., 2002 1 CLR 786 as also the earlier judgment of the Apex Court in the case of State of J. & K. v. Triloki Nath Khosa, AIR 1974 S.C.page 1.

6. For the aforesaid reason we set aside the order of the Appellate Authority and remand the matter back to the Appellate Authority for hearing the Appeal afresh without the respondent No.3 being a party. All contentions and questions which are open to the petitioner can be raised before the Appellate Authority including the contentions as sought to be now raised based on the affidavit filed by the Respondent before this Court. Rule made absolute accordingly. No order as to costs.

7. Learned Counsel for the petitioner points out that he is residing in the premises and he should not be evicted atleast till the disposal of the Appeal. Considering that the Appeal before the Appellate Authority is pending during

hearing and final disposal of the Appeal the Respondents not to take steps to evict the petitioner and for a further period of four weeks thereafter.

(F.I. REBELLO, J.)

(S.P. KUKDAY, J.)